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CRP. No.3004 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 3004 of 2023
& CMP No. 18553 of 2023

- 1.The Chitra Avenue Flat Owners Welfare Association
Represented by its Secretary S.Giridharan
No. 9, Choolaimedu High Road,
Chennai – 600 094.
2. S.Giridharan
- 3.V.Sathish

...Petitioners/Petitioners/Defendants 2,4 & 6
Vs.

- 1.V.G.Selvaraja
- 2.The District Registrar
Chennai Central.
- 3.S.Linal Amalraj
- 4.Ramakrishnan
- 5.Muthuraman

...1st Respondent/1st Respondent/Plaintiff

...2 to 5 Respondents/2 to 5 Respondents/Defendants 1,3,5 &7

PRAYER : This Civil Revision Petition is filed under Section 227 of the Constitution of India, praying to set aside the order passed by the VIII Assistant City Civil Court, Chennai dated 04.08.2023 in I.A No. 7 of 2023



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in O.S No. 7042 of 2022, consequently reject the plaint in O.S No. 7042 of 2022 pending on the file of VIII Assistant City Civil Court, Chennai.

For Petitioners : Mr.Y.kajanavas

For Respondents : Mr.S.kamadevan for R1

ORDER

This petition has been filed to set aside the order passed by the VIII Assistant City Civil Court, Chennai dated 04.08.2023 in I.A No. 7 of 2023 in O.S No. 7042 of 2022, consequently reject the plaint in O.S No. 7042 of 2022 pending on the file of VIII Assistant City Civil Court, Chennai.

2. The learned counsel for the petitioners/defendants submitted that the petitioner filed I.A No. 7 of 2023 in O.S No. 7042 of 2022 before the Trial Court to reject the plaint on the ground that the plaintiff/respondent herein is not a member of the Chitra Avenue Flat Owners Welfare Association hence he has no *locus standi* to file the suit. The said application was strongly objected by the plaintiff/respondent herein by filing objection stating that as a flat owner he is entitle to raise his objection about violations while conducting the election and the same could not be objected by the defendants" as it is only remedy for him to approach the Civil forum. Considering the submissions on either side the trial Court



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dismissed the said application holding that there is no prime facie materials available on the side of the defendant to reject the plaint. Furthermore, after filing of the written statement, issues were framed and P.W.1 was examined, during cross examination of P.W.1 these defendants preferred this application with an intention to drag on the proceedings. Moreover, the election was held as per the direction of this Court in CRP proceedings dated 28.07.2022, accordingly the election was conducted, if at all any malpractice was happened in the election that can be elucidated only after the Trial. Accordingly the said application was dismissed. Challenging the same this Civil Revision petition was filed by the defendants.

3. The learned counsel for the petitioner submitted that the plaintiff has no *locus standi* to dispute the election held by the second defendant as he is not a member of the Association and also at any stage of the proceedings he is entitle to file the petition to reject the plaint, to substantiate his claim he relied the ratio laid down in the Judgment of this Court in the case of Radhakrishnan Vs V.Sundaramoorthy:

5. Once an application is filed under Section Order 7 Rule 11 CPC, the Court has to dispose the same before proceeding with the Trial. There is no point or sense in proceeding with the trial of the case, in case the plaint



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(election petition in present case) is only to be rejected at at the threshold.

Therefore, the defendant is entitle to file the application for rejection before filing his written statement.....

4. By way of reply, the learned counsel for the respondent submitted that he is member of the flat owner association and he is having the right to dispute the election results and the same can be established at the time of the trial which was rightly appreciated by the Trial Court which needs no interference.

5. Considering the submissions on either side and also on perusal of records, it reveals that the suit was filed by the respondent for the relief of permanent injunction and after receipt of notice the written statement was filed by the petitioner by denying the averment in the plaint more particularly with regard to *locus standi* of the plaintiff to dispute the election. Moreover, in paragraph 4, 5, 6 of the written statement the defendant raised allegations with regard to maintainability of the suit as well as power of the society which are all defence already raised by the defendant in the written statement. Based on the defendants' written statement issues were framed and P.W.1 was examined and the matter is pending for cross examination of P.W.1 at that stage the defendants filed



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application to reject the plaint as such is unsustainable which was rightly appreciated by the Trial Judge. Further the defendants' claim is beyond the scope of Order 7 Rule 11 of CPC, since because it cannot be decided merely based on the allegations of the defendants. The main objection raised by the defendants is that the plaintiff is not a candidate to the election so he has no *locus standi* to file the suit but it this can be decided only by the Trial Court. Therefore, the reason assigned by the Trial court is acceptable one needs no interference. However, the liberty is granted to the defendants' to put their defence before the Trial court. Further, the Trial Court is directed to frame the issue properly more particularly with regard to *locus standi* of the plaintiff.

6. In result, this petition is disposed of. No Cost. Consequentially, connected miscellaneous petition is closed.

04.10.2023

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Note : Issue order copy on 06.10.2023.

To

The District Registrar
Chennai Central.



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T.V.THAMILSELVI,J.

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